

House Engrossed

State of Arizona
House of Representatives
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First Regular Session
2001

CHAPTER 67

HOUSE BILL 2024

AN ACT

AMENDING SECTIONS 32-2123, 32-2125.01, 32-2136, 32-2151, 32-2151.01, 32-2157, 32-2175, 32-2186, 32-2188, 32-2194.03 AND 32-2194.06, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 20, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2166; RELATING TO REAL ESTATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-2123, Arizona Revised Statutes, is amended to
3 read:

4 32-2123. Application for license as broker or salesperson

5 A. Every application for an original license shall be EITHER SUBMITTED
6 in writing and signed by the applicant OR SUBMITTED ELECTRONICALLY AND
7 CONTAIN AN ELECTRONIC OR DIGITAL IDENTIFIER THAT THE COMMISSIONER DEEMS
8 APPROPRIATE. The application shall be accompanied by all applicable fees.

9 B. An application for an original license as a broker or salesperson
10 shall set forth:

11 1. The legal name and residence address of the applicant.

12 2. The applicant's employers and employment history for the
13 immediately preceding ten years and any experience in real estate sales,
14 appraisals, transfers or similar business in which the applicant previously
15 engaged, if the commissioner determines that this information is needed to
16 reasonably evaluate the good moral character of the applicant.

17 3. The name and place of business of the applicant's present employer,
18 if any.

19 4. Whether the applicant has ever been convicted of a felony and, if
20 so, the nature of the felony, where and when committed and the disposition
21 of the conviction, or whether the applicant has been disbarred or suspended
22 from the practice of law.

23 5. Whether the applicant has ever been refused a broker's or
24 salesperson's license or any other occupational license in this or any other
25 state, whether the applicant's license as a broker or salesperson has been
26 revoked or suspended in this or any other state or whether the applicant has
27 had any other occupational or professional license, certificate or
28 registration revoked or suspended in this or any other state.

29 6. The name of any corporation, company or partnership that is or ever
30 has been licensed by the department in which the applicant exercised any
31 control.

32 7. If the applicant is a natural person, the applicant's social
33 security number. If the applicant, due to bona fide religious convictions
34 or other bona fide reasons that the applicant documents on the application
35 to the satisfaction of the commissioner, does not have a social security
36 number, the applicant may provide the applicant's federal tax identification
37 number with the application. The state real estate department shall use the
38 applicant's social security number or federal tax identification number to
39 aid the department of economic security in locating noncustodial parents or
40 the assets of noncustodial parents, and for no other purpose.

41 C. An application for a license as a broker additionally shall set
42 forth:

43 1. The name under which the business is to be conducted.

44 2. The situs and mailing address of the applicant's place of business,
45 or if more than one, the situs and mailing addresses of each.

1 D. An applicant for a broker's or salesperson's license shall provide
2 information that the commissioner determines is reasonably necessary to
3 establish the character of the applicant. The information may include but
4 shall not be limited to:

5 1. Prior criminal records.

6 2. Fingerprints and background information, pursuant to section
7 32-2108.01.

8 3. An affidavit setting out whether the applicant has participated in,
9 operated or held an interest in any land development company which has filed,
10 or is subject to, a petition under any chapter of the federal bankruptcy act.

11 E. Each person licensed pursuant to this article, whether the license
12 is active or inactive, shall have available for the licensee's use a current
13 copy of the department's statutes, rules and annotations pertaining to real
14 estate laws. Failure to comply with this requirement shall not be deemed
15 grounds for a civil penalty or for denial, suspension or revocation of a
16 license.

17 Sec. 2. Section 32-2125.01, Arizona Revised Statutes, is amended to
18 read:

19 32-2125.01. Issuance of license; multiple licenses; use

20 A. When the requirements for application, examination and payment of
21 fees are completed to the satisfaction of the commissioner, the commissioner
22 shall issue the license applied for to the applicant. Any person who has
23 passed the state examination for broker or salesperson must become licensed
24 within one year from the date of the examination. Failure to comply with
25 this section will necessitate the submission to and passing of another
26 examination.

27 B. Not more than one license shall be issued and outstanding to or in
28 favor of a licensee at any one time, except that a person licensed as a real
29 estate ~~associate~~ broker or real estate salesperson may engage in cemetery or
30 membership camping sales activities without being separately licensed to
31 engage in these activities. A REAL ESTATE licensee may ~~not be employed by~~
32 ~~more than~~ HAVE ONLY one employing broker IN EACH OF THE FOLLOWING CATEGORIES:

33 1. CEMETERY.

34 2. MEMBERSHIP CAMPING.

35 3. REAL ESTATE.

36 C. A designated or employing real estate broker may engage in cemetery
37 or membership camping sales activities and may employ cemetery and membership
38 camping salespersons and associate brokers without being separately licensed
39 as a cemetery or membership camping broker or salesperson.

40 Sec. 3. Section 32-2136, Arizona Revised Statutes, is amended to read:

41 32-2136. Broker management clinic

42 A. The department shall determine the instructor qualifications for
43 teaching broker management clinics and the course content of broker
44 management clinics for persons required to attend these clinics pursuant to
45 subsection C of this section.

1 B. A broker management clinic shall include instruction on department
2 audits and on the obligations and responsibilities of designated brokers. A
3 broker management clinic shall address record keeping requirements, trust
4 fund accounts, advertising and promotions, listing agreements, contracts,
5 fiduciary duties, material disclosures, department investigations and
6 employee supervision and broker responsibilities. A broker management clinic
7 may be designed to address property management activities or sales
8 activities, or both.

9 ~~C. A person who is issued an original real estate broker's license~~
10 ~~shall attend a broker management clinic within ninety days after issuance of~~
11 ~~the license. A person who becomes a designated broker shall attend a broker~~
12 ~~management clinic within ninety days after becoming a designated broker,~~
13 ~~unless the broker has attended a broker management clinic during the broker's~~
14 ~~current licensing period. AN APPLICANT FOR AN ORIGINAL REAL ESTATE BROKER'S~~
15 ~~LICENSE SHALL ATTEND A BROKER MANAGEMENT CLINIC BEFORE ACTIVATING THE~~
16 ~~LICENSE. A BROKER SHALL ATTEND A BROKER MANAGEMENT CLINIC BEFORE BECOMING~~
17 ~~A DESIGNATED BROKER, UNLESS THE BROKER HAS ATTENDED A BROKER MANAGEMENT~~
18 ~~CLINIC DURING THE BROKER'S CURRENT LICENSING PERIOD. ALL ACTIVE designated~~
19 ~~real estate brokers shall attend a broker management clinic once during every~~
20 ~~two year licensing period after their initial attendance.~~

21 D. Attendance at a broker management clinic constitutes three
22 clock-hours of real estate oriented education pursuant to section 32-2130,
23 subsection A.

24 Sec. 4. Section 32-2151, Arizona Revised Statutes, is amended to read:

25 32-2151. Disposition of funds; trust money deposit requirements

26 A. Unless otherwise provided in writing by all parties to a
27 transaction, any licensed real estate broker who does not immediately place
28 all funds entrusted to him-~~THE BROKER~~, in his ~~THE BROKER'S~~ capacity as a real
29 estate broker, in a neutral escrow depository in this state shall upon
30 receipt place all such funds in a trust fund account in a federally insured
31 or guaranteed account in a depository located in this state. The
32 commissioner may adopt such rules as are necessary to provide for records to
33 be maintained and the manner in which such trust fund account deposits may
34 be made.

35 B. The following minimum requirements apply to each broker's trust
36 fund account:

37 1. The broker shall make deposits to trust fund accounts by deposit
38 slips. Receipts or other documentation shall identify each transaction, the
39 date and the amount of each deposit and the names of parties involved in the
40 transaction represented by the deposit and monies shall be used only for the
41 purpose for which the monies were deposited.

42 2. The broker shall retain a complete record of all monies received
43 in connection with a real estate transaction in the main or branch office of
44 the designated broker IN THIS STATE OR AT AN OFF-SITE STORAGE LOCATION IN
45 THIS STATE IF THE BROKER PROVIDES PRIOR WRITTEN NOTIFICATION OF THE STREET

1 ADDRESS OF THE OFF-SITE STORAGE LOCATION TO THE DEPARTMENT. A broker's
2 records shall be kept according to generally accepted accounting principles
3 and shall include a properly descriptive receipts and disbursement journal
4 and client ledger. The broker shall keep any computerized records in a
5 manner allowing reconstruction in the event of destruction of electronic
6 data. The broker shall maintain a trust fund account bank reconciliation and
7 client ledger balance on a monthly basis and shall remove any interest earned
8 on a trust fund account at least once every twelve months. A broker shall
9 not permit advance payment of monies belonging to others to be deposited in
10 the broker's personal account or to be commingled with personal monies. It
11 is not considered commingling if, when establishing a trust fund account, a
12 broker deposits monies not exceeding five hundred dollars to keep the account
13 open or to avoid charges for an insufficient minimum balance.

14 C. An agreement to place monies entrusted to the broker in a
15 depository that is located outside of this state is valid if all parties to
16 the transaction agree in writing and either:

17 1. The monies are placed in a property management trust account
18 established pursuant to section 32-2174 and:

19 (a) The account is federally insured or guaranteed.

20 (b) The property management agreement contains:

21 (i) Disclosure that the department's regulatory protections of the
22 owner's monies may be significantly hampered.

23 (ii) Disclosure that the owner may not have access to or any control
24 over the trust account, except to audit and review the status of the account.

25 (iii) An addendum that has the signed authorization by an
26 appropriately empowered official of the depository in which the trust account
27 is placed that the trust account and all related documentation will be open
28 to examination by the department and the owner.

29 2. If the monies are not deposited in a property management trust
30 account, the broker discloses to the parties to the transaction that
31 potential risks may accrue as the result of depositing the monies in a
32 depository outside this state.

33 D. This section shall not be construed to allow a broker to commingle
34 monies entrusted to the broker with the broker's own monies, unless the
35 commissioner adopts rules that allow commingling.

36 Sec. 5. Section 32-2151.01, Arizona Revised Statutes, is amended to
37 read:

38 32-2151.01. Broker requirements; record keeping requirements

39 A. Each licensed employing broker shall keep records of all real
40 estate, cemetery, time-share or membership camping transactions handled by
41 or through the broker and shall keep employment records, including copies of
42 employment status, for all current and former employees. The records
43 required by this section shall include copies of earnest money receipts,
44 closing statements showing all receipts, disbursements and adjustments, sales
45 contracts and, if applicable, copies of listing contracts. The records shall

1 be open at all reasonable times for inspection by the commissioner or the
2 commissioner's representatives. The records of each transaction and
3 employment records shall be kept by the broker for a period of at least five
4 years from the date of the termination of the transaction or employment. THE
5 RECORDS SHALL BE KEPT IN THE EMPLOYING BROKER'S PRINCIPAL OFFICE OR LICENSED
6 BRANCH OFFICE IN THIS STATE OR AT AN OFF-SITE STORAGE LOCATION IN THIS STATE
7 IF THE BROKER PROVIDES PRIOR WRITTEN NOTIFICATION OF THE STREET ADDRESS OF
8 THE OFF-SITE STORAGE LOCATION TO THE DEPARTMENT.

9 B. Except as provided by section 32-2174, subsection C, a broker shall
10 not grant any person authority to withdraw monies from the broker's trust
11 fund account unless that person is a licensee under that broker's license.

12 C. A broker shall specifically state in the real estate purchase
13 contract, lease agreement or receipt for earnest money the type of earnest
14 money received in any real estate transaction, whether it is cash, a check,
15 a promissory note or any other item of value.

16 D. All licensees shall promptly place all cash, checks or other items
17 of value received as payment in connection with a real estate transaction in
18 the care of the designated broker.

19 E. The broker shall maintain each real estate purchase contract or
20 lease agreement and the transaction folder in which it is kept in a
21 chronological log or other systematic manner that is easily accessible by the
22 commissioner or the commissioner's representatives.

23 F. Sales transaction folders shall include:

24 1. Confirmation that the earnest monies or other monies handled by or
25 through the broker were handled according to instructions given by or agreed
26 to by the parties to the transaction.

27 2. A complete copy of the sales contract, any escrow account receipt,
28 any closing or settlement statement and, if applicable, a copy of the escrow
29 instructions, listing agreement, employment agreement and release of escrow
30 monies.

31 G. The designated broker shall review each listing agreement, purchase
32 or nonresidential lease agreement or similar instrument within five days of
33 the date of execution by placing the broker's initials and the date of review
34 on the instrument on the same page as the signatures of the parties. A
35 designated broker may authorize in writing an associate broker who the
36 designated broker employs to review and initial these instruments on the
37 designated broker's behalf.

38 H. The broker shall retain all real estate purchase and nonresidential
39 lease contracts and listing EMPLOYMENT agreements, or copies of these
40 documents, in the employing broker's principal office or licensed branch
41 office OR AT AN OFF-SITE STORAGE LOCATION IN THIS STATE IF THE BROKER
42 PROVIDES PRIOR WRITTEN NOTIFICATION OF THE STREET ADDRESS OF THE OFF-SITE
43 STORAGE LOCATION TO THE DEPARTMENT.

44 I. The broker shall retain an original, a copy or a microfilm copy of
45 any document evidencing a rejected offer to purchase real property as a

1 matter of record for at least one year. In instances that result in binding
2 contracts, the broker shall retain prior rejected offers for at least five
3 years.

4 J. If real property in a development is sold or leased by a developer
5 without the services of a listing or selling broker, the developer shall keep
6 all records required by subsections A and C of this section.

7 Sec. 6. Section 32-2157, Arizona Revised Statutes, is amended to read:

8 32-2157. Commissioner action requiring commissioner to present
9 respondent with written complaint and notice;
10 summary suspension; hearing

11 A. Except as provided in subsection B of this section, before
12 suspending, revoking or denying the renewal or the right of renewal of any
13 license, or issuing any order prohibiting the sale or lease of property or
14 the sale of cemetery lots or membership camping contracts as provided by this
15 chapter, the commissioner shall present the licensee, owner, operator, agent
16 or subdivider DEVELOPER with written notice of the charges filed against the
17 person, or reasons for prohibiting the sale or lease, and shall afford the
18 person an opportunity for a hearing pursuant to title 41, chapter 6, article
19 10. WITHIN TWENTY DAYS AFTER SERVICE OF A NOTICE OF HEARING, THE RESPONDENT
20 SHALL APPEAR BY FILING A WRITTEN ANSWER TO THE COMPLAINT.

21 B. If the commissioner finds that the public health, safety or welfare
22 imperatively requires emergency action, and incorporates a finding to that
23 effect in the commissioner's order, summary suspension of a license or sales
24 may be ordered. Grounds for issuance of an order of summary suspension
25 include the violation of any of the provisions of section 32-2153, subsection
26 B and the termination of a license pursuant to section 32-2188, subsection
27 H. A licensee, owner, operator, agent or subdivider DEVELOPER may request
28 a hearing pursuant to title 41, chapter 6, article 10. A summary suspension
29 shall be deemed to be final if a request for a hearing is not received within
30 thirty days as provided by section 41-1092.03.

31 C. THE DEPARTMENT MAY ISSUE A SUMMARY SUSPENSION WHEN THE DEPARTMENT
32 RECEIVES NOTICE THAT A PERSON LICENSED PURSUANT TO THIS CHAPTER HAS BEEN
33 CONVICTED OF A FELONY OFFENSE AND IS CURRENTLY INCARCERATED FOR THE
34 CONVICTION, PAROLED OR UNDER THE SUPERVISION OF A PAROLE OR COMMUNITY
35 SUPERVISION OFFICER OR IS ON PROBATION AS A RESULT OF THE CONVICTION. THIS
36 SUBSECTION DOES NOT LIMIT THE COMMISSIONER'S AUTHORITY TO SEEK REVOCATION OF
37 A LICENSE OR OTHER DISCIPLINARY ACTION PURSUANT TO THIS CHAPTER.

38 Sec. 7. Title 32, chapter 20, article 3, Arizona Revised Statutes, is
39 amended by adding section 32-2166, to read:

40 32-2166. Activities while incarcerated; violation;
41 classification

42 A. WHILE INCARCERATED A PERSON WHO IS LICENSED PURSUANT TO THIS
43 CHAPTER SHALL NOT PERFORM ACTS THAT REQUIRE A LICENSE UNDER THIS CHAPTER.

44 B. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 6 FELONY.

1 Sec. 8. Section 32-2175, Arizona Revised Statutes, is amended to read:

2 32-2175. Property management records; requirements; audits

3 A. Property management firms shall keep A residential rental
4 ~~agreements~~ AGREEMENT and related residential rental agreement documents FOR
5 ONE YEAR FROM THE EXPIRATION OF THE RENTAL AGREEMENT OR UNTIL THE RENTAL
6 AGREEMENT AND RELATED DOCUMENTS ARE GIVEN TO THE OWNER AT THE TERMINATION OF
7 ANY PROPERTY MANAGEMENT AGREEMENT. THE RECORDS SHALL BE KEPT AT THE BROKER'S
8 MAIN OFFICE OR AT AN OFF-SITE STORAGE LOCATION IN THIS STATE IF THE BROKER
9 PROVIDES PRIOR WRITTEN NOTIFICATION OF THE STREET ADDRESS OF THE OFF-SITE
10 STORAGE LOCATION TO THE DEPARTMENT. ~~on site or at another appropriate off-~~
11 ~~site storage location for one year from the expiration of the rental~~
12 ~~agreement or until these rental agreements and documents are given to the~~
13 ~~owner at the termination of any property management agreement.~~

14 B. Property management firms shall keep records of all finder fees
15 that are paid to tenants ~~on site or at another appropriate off-site storage~~
16 ~~location~~ for three years after the payment is made or until the records are
17 given to the owner at the termination of the property management agreement.
18 RECORDS SHALL BE KEPT AT THE BROKER'S MAIN OFFICE OR AT AN OFF-SITE STORAGE
19 LOCATION IN THIS STATE IF THE BROKER PROVIDES PRIOR WRITTEN NOTIFICATION OF
20 THE STREET ADDRESS OF THE OFF-SITE STORAGE LOCATION TO THE DEPARTMENT.

21 C. Property management firms shall keep all financial records
22 pertaining to clients for at least three years from the date each document
23 was executed, including bank statements, canceled checks OR BANK GENERATED
24 CHECK IMAGES, deposit slips, bank receipts, receipts and disbursement
25 journals, owner statements, client ledgers and applicable bills, invoices and
26 statements.

27 D. Only the designated broker or the broker's authorized real estate
28 licensee, on behalf of the broker, may sign nonresidential rental agreements.
29 The broker shall execute in writing and shall file any delegation of
30 authority in the broker's employee file. Fully executed residential lease
31 agreements are not required to be reviewed and initialed.

32 E. The property management firms shall consecutively number or file
33 all signed property management agreements in compliance with a system that
34 is orderly, easily accessible by the commissioner or the commissioner's
35 representative and consistent with generally accepted professional standards
36 of the industry for that type of real estate.

37 F. Property management firms shall maintain each nonresidential real
38 estate lease agreement and the transaction folder in which it is kept in a
39 chronological log or other systematic manner that is easily accessible by the
40 commissioner or the commissioner's representatives. For nonresidential lease
41 transactions, transaction folders shall contain:

42 1. Confirmation that the deposits or other monies that were handled
43 by or through the broker were handled according to instructions given by or
44 agreed on by the parties to the transaction.

45 2. A complete copy of the nonresidential lease or rental agreement.

1 3. If applicable, a copy of the listing agreement.

2 G. Property management firms shall number on-site residential rental
3 transaction folders according to dwelling unit number or other systematic
4 manner that is easily accessible by the commissioner or the commissioner's
5 representative. A broker is not required to maintain duplicate residential
6 rental transaction folders.

7 H. On request by the commissioner or the commissioner's
8 representatives for routine audit purposes the broker shall make available
9 within a reasonable amount of time all records relative to property
10 management accounts, including lease agreements, lease related documents and
11 trust account records. The department is limited to auditing those areas
12 that are related to the business activities of a broker and that have a
13 material bearing on the accuracy of the audit. This subsection shall not
14 limit the immediacy or scope of an audit if a violation of real estate
15 statutes or rules is suspected.

16 Sec. 9. Section 32-2186, Arizona Revised Statutes, is amended to read:
17 32-2186. Use of fund; exception; fees

18 A. The commissioner is authorized and directed to establish and
19 maintain a real estate recovery fund from ~~which any person, except bonding~~
20 ~~companies when they are not principals in a real estate transaction, FOR THE~~
21 ~~BENEFIT OF ANY PERSON aggrieved by an ANY act, representation, transaction~~
22 ~~or conduct of a licensed real estate or cemetery broker or real estate or~~
23 ~~cemetery salesperson, which is in violation of the provisions of THAT~~
24 ~~VIOLATES this chapter or the rules adopted pursuant to this chapter, may~~
25 ~~recover by order of any court of competent jurisdiction in this state an~~
26 ~~award from the fund limited to the damages which represent. THE FUND SHALL~~
27 ~~ONLY PAY FOR A LOSS THAT IS an actual and direct OUT-OF-POCKET loss to the~~
28 ~~aggrieved person DIRECTLY arising out of the real estate or cemetery~~
29 ~~transaction, including reasonable attorney fees and court costs, but~~
30 ~~excluding post-judgment interest, provided that nothing shall be construed~~
31 ~~to obligate the fund for more than twenty thousand dollars per transaction~~
32 ~~regardless of the number of persons aggrieved or the number of licensees or~~
33 ~~parcels of real estate involved in such transaction. In addition: IN WHICH~~
34 ~~THE LICENSEE EITHER:~~

35 1. PERFORMED ACTS THAT REQUIRED A REAL ESTATE OR CEMETERY LICENSE
36 PURSUANT TO THIS CHAPTER.

37 2. ENGAGED IN FRAUD OR MISREPRESENTATION WHILE ACTING AS A PRINCIPAL
38 IN THE PURCHASE OR SALE OF REAL PROPERTY AND THE AGGRIEVED PERSON RELIED ON
39 THE BROKER'S OR SALESPERSON'S LICENSED STATUS.

40 B. THE FUND'S LIABILITY SHALL NOT EXCEED:

41 1. THIRTY THOUSAND DOLLARS FOR EACH TRANSACTION, REGARDLESS OF THE
42 NUMBER OF PERSONS AGGRIEVED OR THE NUMBER OF LICENSEES OR PARCELS OF REAL
43 ESTATE INVOLVED.

44 2. NINETY THOUSAND DOLLARS FOR EACH LICENSEE.

1 ~~1.~~ C. The liability of the fund for the acts of a licensed real
2 estate or cemetery broker or real estate or cemetery salesperson is
3 terminated upon the issuance of court orders authorizing payments from the
4 fund ~~for judgments, or any unsatisfied portion of judgments,~~ in an aggregate
5 amount of ~~forty thousand dollars on behalf of such licensee~~ AS PRESCRIBED BY
6 SUBSECTION B.

7 ~~2.~~ D. A licensee acting as a principal or agent in a real estate
8 transaction has no claim against the fund, including marital communities,
9 corporations, limited liability companies and partnerships in which the
10 licensee is a principal, member, general partner, officer or director, or
11 those entities in which the licensee holds a direct or indirect interest of
12 at least ten per cent.

13 ~~3.~~ E. The fund is liable to pay only against the license of a natural
14 person, not on that of a corporation, a partnership or any other fictitious
15 entity.

16 ~~4.~~ F. The fund is liable to pay only for damages arising out of a
17 transaction in which the defendant licensee performed acts for which a real
18 estate or cemetery license was required or when the defendant licensee, while
19 acting as principal in the purchase or sale of real property, engaged in
20 fraud or misrepresentation and the aggrieved person was harmed due to
21 reliance on the defendant's licensed status.

22 ~~5.~~ G. The fund shall not be liable for DAMAGES OR LOSSES RESULTING
23 FROM OR CAUSED BY:

24 ~~(a)~~ 1. ~~Damages caused by~~ A person who held an inactive license at the
25 time of the violation.

26 ~~(b)~~ 2. ~~losses resulting from~~ Speculation, including lost profits and
27 other unrealized losses.

28 ~~(c)~~ 3. ~~Reimbursement for losses caused by~~ Transactions for property
29 that is located outside of this state.

30 ~~(d)~~ 4. ~~losses from~~ Loans, notes, limited partnerships or other
31 securities, regardless of whether the loss was caused by an investment in or
32 was secured by real property.

33 5. A JUDGMENT ENTERED AGAINST A BONDING COMPANY IF THE BONDING COMPANY
34 IS NOT A PRINCIPAL IN THE UNDERLYING REAL ESTATE TRANSACTION.

35 6. A TENANT'S CONDUCT OR NEGLECT.

36 7. VANDALISM.

37 8. NATURAL CAUSES.

38 9. PUNITIVE DAMAGES.

39 10. POST JUDGMENT INTEREST.

40 11. UNDOCUMENTED TRANSACTIONS OR LOSSES.

41 ~~6.~~ H. An aggrieved person is required to submit ~~proof of an~~ TO THE
42 DEPARTMENT, AT OR BEFORE THE TIME THE PERSON FILES AN APPLICATION FOR PAYMENT
43 FROM THE FUND, COPIES OF CONTRACTS, DOCUMENTS AND RECEIPTS FROM THE
44 TRANSACTION, COPIES OF ALL existing judgment RECORDED JUDGMENTS, ~~the amount~~
45 DOCUMENTATION of ACTUAL AND DIRECT out-of-pocket losses, AND any offsetting

1 payments received and ALL collection efforts attempted, AND A VERIFIED
2 STATEMENT OF CALCULATIONS SUPPORTING THE AMOUNT CLAIMED. ~~to the department~~
3 ~~at the time that an order directing payment from the fund is sought from the~~
4 ~~superior or justice court.~~

5 Sec. 10. Section 32-2188, Arizona Revised Statutes, is amended to
6 read:

7 32-2188. Statute of limitations; response; recovery from fund;
8 defense; insufficient monies

9 A. An action for a judgment which subsequently results in an order for
10 collection from the real estate recovery fund shall not be started later than
11 five years from the accrual of the cause of action. If any aggrieved person
12 commences an action for a judgment which may result in collection from the
13 real estate recovery fund, the aggrieved person shall notify the commissioner
14 in writing, by certified mail, return receipt requested, ~~to this effect at~~
15 ~~the time of the commencement of such~~ WITHIN FORTY-FIVE DAYS OF COMMENCING THE
16 action. THE NOTICE DESCRIBED IN THIS SUBSECTION SHALL BE ADDRESSED TO THE
17 RECOVERY FUND ADMINISTRATOR. The commissioner may intervene in and defend
18 any such action.

19 B. If an aggrieved person commences an action for a judgment which may
20 result in an order for collection from the real estate recovery fund, and the
21 defendant licensee cannot be served process personally in this state, then
22 the summons may be served by the alternative methods of service provided for
23 by the Arizona rules of civil procedure, including service by publication.
24 A judgment obtained after service by publication only applies to and is
25 enforceable against the real estate recovery fund. The department may
26 intervene in and defend any such action.

27 C. If an aggrieved person recovers a valid judgment in any court of
28 competent jurisdiction against any real estate or cemetery broker or
29 salesperson, for any act, representation, transaction, or conduct which is
30 in violation of the provisions of this chapter or the rules adopted pursuant
31 to this chapter, the aggrieved person may, upon the termination of all
32 proceedings, including reviews and appeals in connection with the judgment,
33 file a verified claim APPLICATION FOR AN ORDER DIRECTING PAYMENT FROM THE
34 REAL ESTATE RECOVERY FUND OF THE AMOUNT UNPAID ON THE JUDGMENT, SUBJECT TO
35 THE LIMITATIONS STATED IN THIS ARTICLE. THE APPLICATION SHALL BE FILED in
36 the SUPERIOR court IN THE COUNTY in which the judgment was entered and, upon
37 written notice to OR IN WHICH A JUDGMENT OR TRANSCRIPT OF JUDGMENT FROM A
38 LOWER COURT HAS BEEN FILED PURSUANT TO SECTION 33-962. THE AGGRIEVED PERSON
39 SHALL SERVE THE APPLICATION ON the commissioner and the judgment debtor, may
40 apply to the court for an order directing payment out of the real estate
41 recovery fund, of the amount unpaid upon the judgment, subject to the
42 limitations stated in this article. SERVICE ON THE COMMISSIONER SHALL BE BY
43 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE RECOVERY FUND
44 ADMINISTRATOR. The commissioner and the judgment debtor each SHALL have
45 thirty-five days after being served with the application within which to file

1 a written response. The court shall thereafter set the matter for hearing
2 on petition of the applicant. The court may, upon a showing of good cause
3 by any party, continue the hearing for such time as the court deems
4 appropriate. If the judgment debtor fails to file a written response to the
5 application, the APPLICANT'S claim may be compromised or settled by the
6 commissioner without a hearing and the court, on joint petition of the
7 applicant and the commissioner, shall issue an order directing payment out
8 of the real estate recovery fund.

9 D. The court shall proceed upon the application in a summary manner,
10 and, upon the hearing thereof, the aggrieved person shall be required to show
11 THAT THE AGGRIEVED PERSON:

12 1. He Is not a spouse of the debtor, or the personal representative
13 of such spouse.

14 2. He Has complied with all the requirements of this article, except
15 that, upon application by the aggrieved person, the commissioner may waive
16 the notification requirement in subsection A of this section, if he THE
17 COMMISSIONER determines that:

18 (a) The public interest is best served by the waiver.

19 (b) The aggrieved person made a good faith effort to comply with the
20 requirements of subsection A of this section.

21 3. He Has obtained a judgment as set out in subsection C of this
22 section, stating the amount of the judgment and the amount owing on the
23 judgment at the date of the application, and that in such action he THE
24 AGGRIEVED PERSON had joined any and all bonding companies which issued
25 corporate surety bonds to the judgment debtors as principals.

26 4. He Has not omitted from the complaint any party who is potentially
27 liable for damages or dismissed any party who is named in the complaint and
28 who otherwise appeared capable of responding in damages, and he THE
29 AGGRIEVED PERSON has employed no other procedural tactics contrary to the
30 diligent prosecution of the complaint in order to provide access to the
31 recovery fund.

32 5. HAS RECORDED A CERTIFIED COPY OF THE SUPERIOR COURT JUDGMENT OR
33 TRANSCRIPT OF JUDGMENT AS PROVIDED IN SECTIONS 33-961 AND 33-962 IN THE
34 COUNTY WHERE THE ACTION IS PENDING AND IN THE COUNTY WHERE ALL JUDGMENT
35 DEBTORS RESIDE AND HAS PROVIDED A COPY OF THE RECORDED JUDGMENT TO THE
36 COMMISSIONER.

37 5. 6. He Has caused to be issued a writ of execution upon the
38 judgment and the officer executing the writ has made a return showing that
39 no personal or real property of the judgment debtor liable to be levied upon
40 in satisfaction of the judgment could be found, or that the amount realized
41 on the sale of the property or of such property as was found, under such
42 execution, was insufficient to satisfy the judgment, stating the amount so
43 realized and the balance remaining due on the judgment after application of
44 DEDUCTING the amount realized.

1 ~~6.~~ 7. He Has caused the judgment debtor to make discovery under oath,
2 pursuant to section 12-1631, concerning his THE DEBTOR'S property.

3 ~~7.~~ 8. He Has made all reasonable searches and inquiries to ascertain
4 whether the judgment debtor ~~is possessed of~~ POSSESSES real or personal
5 property or other assets liable to be sold or applied in satisfaction of the
6 judgment.

7 ~~8.~~ 9. That By such ~~search~~ he SEARCHING has discovered no personal or
8 real property or other assets liable to be sold or applied, or that ~~he~~ has
9 discovered certain property, describing it, owned by the judgment debtor and
10 liable to be so applied, and that ~~he~~ has taken all necessary action and
11 proceedings for the realization, and that the amount realized was
12 insufficient to satisfy the judgment, stating the amount so realized and the
13 balance remaining due on the judgment after ~~application of~~ DEDUCTING the
14 amount realized.

15 ~~9.~~ 10. He Has diligently pursued collection efforts against other
16 judgment debtors and all other persons liable to the claimant APPLICANT in
17 the transaction that forms the basis for the underlying judgment.

18 ~~10.~~ 11. That the following items, if any, as recovered by him have
19 been ~~applied to~~ HAS DEDUCTED FROM the actual or compensatory damages awarded
20 by the court:

21 (a) Any amount recovered OR ANTICIPATED from the judgment debtor or
22 debtors.

23 (b) Any amount recovered OR ANTICIPATED from the bonding, insurance
24 or title company or companies, INCLUDING RECOVERY OF PUNITIVE DAMAGES.

25 (c) Any amount recovered OR ANTICIPATED in out of court settlements
26 as to particular defendants.

27 (d) Any amount of tax benefits accrued or taken as deductions on
28 federal, state or local income tax returns.

29 ~~E. If the aggrieved person satisfies the court that it is not~~
30 ~~practicable to comply with~~ THE COURT MAY DISPENSE WITH THE NECESSITY TO
31 COMPLY WITH one or more of the requirements enumerated in subsection D,
32 paragraphs ~~5, 6, 7, 8, 9 and 10~~ 11 of this section and IF THE COURT IS
33 SATISFIED ~~that~~ the aggrieved person has taken all reasonable steps to collect
34 the amount of the judgment or the unsatisfied part of the judgment and FROM
35 ALL JUDGMENT DEBTORS BUT has been unable to collect the same, ~~the court may~~
36 ~~in its discretion dispense with the necessity for complying with such~~
37 requirements.

38 F. The court shall make an order directed to the commissioner
39 requiring payment from the real estate recovery fund of whatever sum it finds
40 to be payable upon the claim APPLICATION, pursuant to the provisions of and
41 in accordance with the limitations contained in this section, if the court
42 is satisfied, upon the hearing, of the truth of all matters required to be
43 shown by the aggrieved person by subsection D of this section and that the
44 aggrieved person has fully pursued and exhausted all remedies available to
45 him for recovering the amount awarded by the judgment of the court. The

1 commissioner may defend any such action on behalf of the real estate recovery
2 fund and has recourse to all appropriate means of defense and review,
3 including the examination of witnesses and the right to relitigate any
4 material and relevant issues in the proceedings against the real estate
5 recovery fund which were determined in the underlying action on which the
6 judgment in favor of the applicant was based. If the judgment in favor of
7 the applicant was by default, stipulation or consent, or if the action
8 against the licensee was defended by a trustee in bankruptcy, the applicant
9 has the burden of proving that the cause of action against the licensee was
10 for a violation of the provisions of this chapter or the rules adopted
11 pursuant to this chapter. Otherwise the judgment creates a rebuttable
12 presumption that the licensee violated the provisions of this chapter or the
13 rules adopted pursuant to this chapter. The commissioner, with court
14 approval, may compromise a claim based on the application of an aggrieved
15 person. The commissioner is not bound by any prior compromise stipulation
16 of the judgment debtor. The judgment debtor may defend an action against the
17 real estate recovery fund on his THE DEBTOR'S own behalf and has recourse to
18 all appropriate means of defense and review, including the examination of
19 witnesses. All matters finally adjudicated in the underlying action are
20 conclusive as to the judgment debtor and the applicant in the proceeding
21 against the real estate recovery fund.

22 G. If the commissioner finds it is likely that the ~~forty thousand~~
23 ~~dollar~~ TOTAL REMAINING liability of the recovery fund is insufficient to pay
24 in full the valid claims of all aggrieved persons ~~by whom~~ WHO MAY HAVE claims
25 ~~have been filed~~ against any one licensee, he THE COMMISSIONER may petition
26 the court in his discretion to initiate a proration proceeding. The court
27 shall grant the petition and order a hearing to distribute the ~~forty thousand~~
28 ~~dollars~~ TOTAL REMAINING LIABILITY OF THE FUND among the claimants APPLICANTS
29 in the ratio that their respective claims bear to the aggregate of the valid
30 claims or in such other manner as the court deems equitable. THE
31 COMMISSIONER OR ANY PARTY MAY FILE A PROPOSED PLAN FOR EQUITABLE DISTRIBUTION
32 OF THE AVAILABLE MONIES. The distribution of monies shall be among the
33 persons entitled to share them, without regard to the order of priority in
34 which their respective judgments may have been obtained or their claims
35 RESPECTIVE APPLICATIONS MAY have been filed. The court may require all
36 claimants APPLICANTS and prospective claimants APPLICANTS against one
37 licensee to be joined in one action, to the end that the respective rights
38 of all the claimants APPLICANTS to the recovery fund may be equitably
39 adjudicated and settled. The court shall not include in the claims for
40 proration the claim of any person who has not, within ninety days after the
41 commissioner has filed his petition COURT HAS ENTERED THE ORDER for
42 proration, filed his A court complaint, served the licensee and filed notice
43 of his A claim with the commissioner AS REQUIRED BY SUBSECTION A OF THIS
44 SECTION. THE LIABILITY OF THE FUND ON ANY APPLICATION AFFECTED BY A
45 PRORATION PROCEEDING IS BASED ON THE LIMITS IN EFFECT ON THE DATE WHEN THE

1 LAST APPLICATION FOR PAYMENT IS FILED. The court may refuse to consider or
2 award prorated recovery to any person who fails to expeditiously prosecute
3 his A claim against the licensee OR PROMPTLY FILE AN APPLICATION FOR PAYMENT
4 AND SUBMIT SUPPORTING DOCUMENTATION AS REQUIRED BY THIS ARTICLE.

5 H. If the commissioner pays from the real estate recovery fund any
6 amount in settlement of ~~a~~ AN APPLICANT'S claim or toward satisfaction of a
7 judgment against a licensed broker, designated broker for a corporation or
8 salesperson, the license of the broker, designated broker for a corporation
9 or salesperson shall be automatically terminated upon the issuance of a court
10 order authorizing payment from the real estate recovery fund. A broker,
11 designated broker for a corporation or salesperson is not eligible to receive
12 a new license until ~~he~~ THE LICENSEE has repaid in full, plus interest at the
13 rate provided by section 44-1201, subsection A, the amount paid from the real
14 estate recovery fund on ~~his~~ THE LICENSEE'S account AND HAS PROVIDED EVIDENCE
15 TO THE COMMISSIONER THAT THE JUDGMENT HAS BEEN FULLY SATISFIED.

16 I. If, at any time, the money deposited in the real estate recovery
17 fund is insufficient to satisfy any duly authorized claim or portion of a
18 claim, the commissioner shall, when sufficient money has been deposited in
19 the real estate recovery fund, satisfy the unpaid claims or portions of
20 claims, in the order that the claims or portions of claims were originally
21 filed, plus accumulated interest at the rate of four per cent a year.

22 Sec. 11. Section 32-2194.03, Arizona Revised Statutes, is amended to
23 read:

24 32-2194.03. Issuance or denial of certificate of authority;
25 voidable sale; order prohibiting sale;
26 investigations by commissioner; public hearings;
27 summary orders

28 A. After examination of a cemetery application, the commissioner,
29 unless there are grounds for denial, shall issue a certificate of authority
30 authorizing the sale in this state of cemetery plots within the
31 cemetery. The commissioner shall notify the state board of funeral directors
32 and embalmers when the commissioner issues a certificate of authority
33 pursuant to this section.

34 B. The commissioner may deny issuance of a certificate of authority
35 on any of the following grounds:

36 1. Failure to comply with any of the provisions of this article or the
37 rules of the commissioner pertaining to this article.

38 2. The sale of plots within the cemetery would constitute
39 misrepresentation to or deceit or fraud of the purchasers.

40 3. The applicant has procured or attempted to procure a certificate
41 of authority under the provisions of this chapter for itself or another by
42 fraud, misrepresentation or deceit or by filing an original or renewal
43 application which is false or misleading.

44 4. Inability to deliver title or other interest contracted for.

1 5. Inability to demonstrate that adequate financial or other
2 arrangements acceptable to the commissioner have been made for installation
3 of all off-site and other cemetery facilities.

4 6. Failure to make a showing that the plots can be used for the
5 purpose for which they are offered.

6 7. Failure to provide in the contract or other writing the use or uses
7 for which the plots are offered, together with any covenants or conditions
8 relative to such plots.

9 8. Failure to include in the contract the disclosure provisions
10 required as provided by section 32-2194.04.

11 9. The owner, agent, officer, director or partner, trust beneficiary
12 holding ten per cent or more beneficial interest or, if a corporation, any
13 stockholder owning ten per cent or more of the stock in such corporation has:

14 (a) Been convicted of a felony or misdemeanor involving fraud or
15 dishonesty or involving conduct of any business or a transaction in real
16 estate, cemetery property, time-share intervals or membership camping
17 campgrounds or contracts.

18 (b) Been permanently or temporarily enjoined by order, judgment or
19 decree from engaging in or continuing any conduct or practice in connection
20 with the sale or purchase of real estate or cemetery property, time-share
21 intervals, membership camping contracts or campgrounds, or securities or
22 involving consumer fraud or the racketeering laws of this state.

23 (c) Had an administrative order entered against him THE APPLICANT by
24 a real estate regulatory agency or security regulatory agency.

25 (d) Had an adverse decision or judgment entered against him THE
26 APPLICANT involving fraud or dishonesty or involving the conduct of any
27 business in or a transaction in real estate, cemetery property, time-share
28 intervals or membership camping campgrounds or contracts.

29 (e) Disregarded or violated any of the provisions of this chapter or
30 the rules of the commissioner pertaining to this chapter.

31 (f) Participated in, operated or held an interest in any entity to
32 which subdivision (b), (c), (d) or (e) applies.

33 10. Failure to satisfy the commissioner that sufficient land has been
34 dedicated for the operation of the cemetery to make it financially secure
35 with respect to the trust fund requirements of this article.

36 C. A cemetery owner or operator shall not sell or offer for sale any
37 plots without first obtaining a certificate of authority as provided in this
38 section. Any sale of plots before the issuance of the certificate of
39 authority is voidable by the purchaser. An action by the purchaser to void
40 such transaction shall be brought within three years of the date of execution
41 of the purchase agreement by the purchaser. In any such action, the
42 prevailing party is entitled to reasonable attorney fees as determined by the
43 court.

44 D. An applicant objecting to the denial of a certificate of authority
45 by the commissioner, within thirty days after receipt of the order of denial,

1 may file a written request for a hearing. The commissioner shall hold the
2 hearing within twenty-five days after the request unless the party
3 requesting the hearing requests a postponement. If the hearing is not held
4 within twenty-five days after the request for a hearing is received, plus the
5 period of any such postponement, or if a proposed decision is not rendered
6 within forty-five days after submission, the order of denial shall be
7 rescinded and a certificate of authority shall be issued.

8 E. ~~The commissioner~~ On the commissioner's own motion or if the
9 commissioner has received a complaint and has satisfactory evidence that the
10 cemetery owner or agent is violating any provision of this article or the
11 rules of the commissioner or has engaged in any unlawful practice as defined
12 in section 44-1522 with respect to the sale of cemetery plots or deviated
13 from the conditions under which the certificate of authority was issued, THE
14 COMMISSIONER may investigate the cemetery project and examine the books and
15 records of the cemetery owner or agent. For the purpose of examination, the
16 cemetery owner or agent shall keep and maintain records of all sales
17 transactions and monies THE CEMETERY OWNER OR AGENT received by him AT THE
18 BROKER'S MAIN OFFICE OR AT AN OFF-SITE STORAGE LOCATION IN THIS STATE IF THE
19 OWNER OR AGENT PROVIDES PRIOR WRITTEN NOTIFICATION OF THE STREET ADDRESS OF
20 THE OFF-SITE STORAGE LOCATION TO THE DEPARTMENT. THE CEMETERY OWNER OR AGENT
21 SHALL make them THE RECORDS accessible to the commissioner on reasonable
22 notice and demand.

23 F. The commissioner on the commissioner's own motion or if the
24 commissioner has received a complaint and has satisfactory evidence that any
25 of the grounds exist as provided in subsection B of this section or that any
26 person has engaged in any unlawful practice as defined in section 44-1522
27 with respect to the sale of cemetery plots or has deviated from the
28 conditions under which the certificate of authority was issued, before or
29 after the commissioner issues the certificate of authority as provided in
30 this section, may conduct an investigation of such matter, issue a summary
31 order as provided in section 32-2157, or hold a public hearing and, after the
32 hearing, may issue such order or orders as the commissioner deems necessary
33 to protect the public interest and ensure compliance with the law, rules or
34 certificate of authority, or the commissioner may bring an action in any
35 court of competent jurisdiction against the person to enjoin the person from
36 continuing such violation or engaging in a violation or doing any act or acts
37 in furtherance of a violation. The court may make such orders or judgments,
38 including the appointment of a receiver, as may be necessary to prevent the
39 use or employment by a person of any unlawful practices or which may be
40 necessary to restore to any person in interest any monies or property, real
41 or personal, which may have been acquired by means of any practice declared
42 to be unlawful in this article.

43 G. If it appears to the commissioner that a person has engaged in or
44 is engaging in a practice declared to be unlawful by this article and that
45 such person is concealing assets or has made arrangements to conceal assets

1 or is about to leave this state, the commissioner may apply to the superior
2 court, without notice, for an order appointing a receiver of the assets of
3 such person or for a writ of ne exeat, or both.

4 H. The court on receipt of an application for the appointment of a
5 receiver or for a writ of ne exeat, or both, shall examine the verified
6 application of the commissioner and such other evidence that the commissioner
7 may present to the court. If satisfied that the interests of the public
8 require the appointment of a receiver or the issuance of a writ of ne exeat
9 without notice, the court shall issue an order appointing the receiver or
10 issue the writ, or both. If the court determines that the interests of the
11 public will not be harmed by the giving of notice, the court shall set a time
12 for a hearing and require that such notice be given as the court deems
13 satisfactory.

14 I. If the court appoints a receiver without notice, the court shall
15 further direct that a copy of the order appointing a receiver be served on
16 the person engaged in or engaging in a practice declared to be unlawful under
17 this article by delivering such order to the last address of the person which
18 is on file with the real estate department. The order shall inform the person
19 that he has the right to request a hearing within ten days after the date of
20 the order, and if requested, the hearing shall be held within thirty days
21 after the date of the order.

22 Sec. 12. Section 32-2194.06, Arizona Revised Statutes, is amended to
23 read:

24 32-2194.06. Records of transactions

25 A. Cemeteries shall keep on file records of all documents in
26 connection with all cemetery plot transactions handled by or through them.
27 The records shall include but are not limited to:

- 28 1. All sales contracts.
- 29 2. Sales contract payment ledgers.
- 30 3. Certificates of burial rights.
- 31 4. All ledgers or books showing all receipts, disbursements or
32 adjustments.

33 5. Records of plats and maps.

34 6. Such other information as the commissioner may reasonably require.

35 B. Each cemetery broker is responsible for maintenance of all
36 documents used in connection with all cemetery plot transactions while in the
37 employment of a cemetery. The records shall be open at all reasonable times
38 for inspection by the commissioner or his THE COMMISSIONER'S representatives.
39 The records of each transaction shall be kept by the cemetery for a period
40 of five years after the date of termination PAYMENT IN FULL of the
41 transaction AT THE BROKER'S MAIN OFFICE OR AT AN OFF-SITE STORAGE LOCATION
42 IN THIS STATE IF THE OWNER OR AGENT PROVIDES PRIOR WRITTEN NOTIFICATION OF
43 THE STREET ADDRESS OF THE OFF-SITE STORAGE LOCATION TO THE DEPARTMENT.

~~APPROVED BY THE GOVERNOR APRIL 9, 2001.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2001.~~

Passed the House January 29, 2001,

Passed the Senate April 2, 2001,

by the following vote: 57 Ayes,

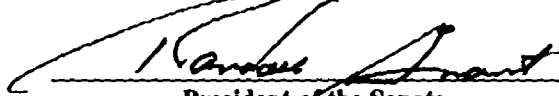
by the following vote: 28 Ayes,

0 Nays, 3 Not Voting

1 Nays, 1 Not Voting



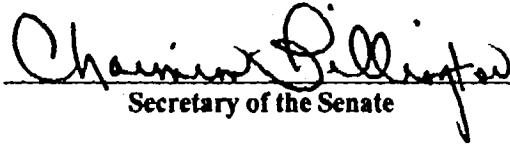
Speaker of the House



President of the Senate



Chief Clerk of the House



Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

3 day of April, 2001,

at 12:35 o'clock P M.



Secretary to the Governor

Approved this 9th day of

April, 2001,

at 11:17 o'clock A M.



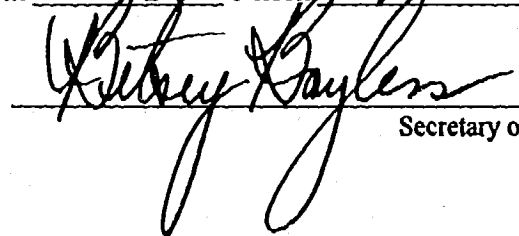
Governor of Arizona

H.B. 2024

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 4 day of April, 2001,

at 4:33 o'clock P M.



Secretary of State